

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In re POLYURETHANE FOAM
ANTITRUST LITIGATION

MDL Docket No. 2196
Index No. 10-MD-2196 (JZ)

THIS DOCUMENT RELATES TO:

ALL DIRECT PURCHASER CLASS CASES
ALL INDIRECT PURCHASER CLASS CASES

NOTICE OF TIME PERIOD UNDER RULE 59(e)

For good cause, Foamex Innovations, Inc. ("FXI") respectfully submits this Notice of Time Period Under Rule 59(e) of the Federal Rules of Civil Procedure regarding Direct Purchaser Class and Indirect Purchaser Class Plaintiffs' Opposition to FXI's Motion for Reconsideration. On page two of their brief, Plaintiffs state that FXI's motion is untimely under Rule 59(e). Neither Sixth Circuit precedent nor the Local Rules set a time limit for motions for reconsideration prior to judgment. *See Mallory v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991) (citing *Marconi Wireless Telegraph Co. v. U.S.*, 320 U.S. 1, 47-48 (1943)). Regardless, given Plaintiffs' argument under Rule 59(e), it should be noted that, as of December 1, 2009, the applicable time period for a motion to alter or amend a judgment under Rule 59(e) is 28 days, not 10 days. FXI's motion was filed on August 3, 2011, 15 days after entry of the Court's July 19, 2011 Order. Accordingly, there can be no argument that FXI's motion was untimely.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2011, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated in the electronic filing receipt. Parties may access this filing through the Court's ECF system.

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